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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,695	12/20/2001	James Loik	JL-00017-US (PAR)	4192
2512	7590	08/05/2004	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			HAMILTON, ISAAC N	
		ART UNIT		PAPER NUMBER
				3724

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/027,695	LOIK, JAMES
Examiner	Art Unit	
Isaac N Hamilton	3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 30 April 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,7-12,14,15,17-22,24,39,40,42-47 and 58-63 is/are pending in the application.
4a) Of the above claim(s) 21 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-2, 7-12, 14, 15, 17-20, 22, 24, 39, 42-47, 58-63 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 30 April 2004 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant elected Species VI, figure 11A, in the response to the requirement for an election of species, filed 04/11/2003. Since the applicant states that the "stop" in claim 21, line 1 is shown in figure 10A, corresponding to Species IV, claim 21 has been withdrawn and will not be examined.

Drawings

2. The drawings were received on 04/30/2004. These drawings are acceptable.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 10, 11, 12, 15, 20, 22, 39, 40, 45 and 58-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Cutlan (403,521). Cutlan discloses housing a, b, c, e, f; handles b, c imply that the tool is sized and shaped to be handheld; cutting guide j, i, f, e; cutting edge k; hollow cutting straw having centerline n; spiral cut o; angle in figure 2 juxtaposed housing a and straw n; secondary component g in column 1, lines 26-36; note opening juxtaposed between guides j and i; tapered portion t and s in column 2, lines 89-99. The cutting

guide j, i, f, e guide the tool about the circumference of the straw, and secondary component g guides the tool along the axis of the straw. The housing being a molding does not affect the structure of the apparatus and only implies the method through which the apparatus was formed, and therefore does not limit the structure. All the pieces of the apparatus are connected and are of unitary construction. The cutting edge 1 is located in the housing as seen in figure 1. Surface that surrounds the straw is the contact surface between i and j and the straw n.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7, 8, 17, 18, 42 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cutlan in view of Sauer (4,548,114). Cutlan discloses everything as noted above, but does not disclose a trimming edge to cut a notch in a straw and does not teach a trimming edge to cut the straw axially. However, Sauer teaches trimming edge to cut a notch in a straw 49 and teaches trimming edge to cut the straw axially 48. It would have been obvious to provide a trimming edge to cut a notch in a straw and a trimming edge to cut the straw axially in Cutlan as taught by Sauer in order to manipulate the straw in Cutlan in several different ways.

7. Claims 9, 19 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cutlan in view of Dackow (3,595,107). Cutlan discloses everything as noted above, but does not disclose a rounding mandrel. However, Dackow teaches rounding mandrel A. It would have

been obvious to provide a rounding mandrel in Cutlan in view of Dackow in order to provide a tapered section on the end of a straw.

8. Claims 14, 24 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cutlan in view of Hicks (5,412,902). Cutlan discloses everything as noted above, but does not disclose a drinking straw. Hicks discloses a drinking straw in column 1, line 54. It would have been obvious to provide a drinking straw in Cutlan as taught by Hicks in order to make fishing lures. Note straw support surface along surface of i and j that contacts straw n.

Response to Arguments

Applicant's arguments with respect to element m and l of Cutlan have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 04/30/2004 have been fully considered but they are not persuasive. Applicant asserts that the apparatus cannot be used with a drinking straw. It is believed that the apparatus can be used with a drinking straw because the shapes are equivalent. Although the straw is more flimsy than a wooden dowel, a straw is capable of being cut in the same manner. It is also to be noted that there are straws that are made of rigid plastic. Applicant asserts that the apparatus in Cutlan does not support the straw. It is believed that elements i, g and j provide sufficient support for the straw, and are capable of preventing the straw from collapsing. Applicant asserts that the cutting guide does not substantially surround the straw. It is believed that cutting guide i, j, f, e surrounds the straw in excess of 180 degrees, which means that the cutting guide is substantially surrounding the straw. Applicant asserts that the apparatus is not sized and shaped for being handheld. It is believed that since the apparatus is formed with

handles b and c, that it is sized and shaped for being handheld. Handles imply that it is handheld. Applicant asserts that the tool must be capable of both allowing the user to rotate the tool about the straw, and rotate the straw in the tool. Although the limitations do not require both cutting procedures, it is believed that the tool is capable of both cutting procedures because it is much easier to cut through a straw than it is to cut through a wooden dowel. Applicant asserts that Cutlan does not disclose the housing being a molding. The Examiner agrees, however, limitations of the housing being a molding only implies how the housing is made, which does not further limit the structure of the apparatus. Applicant asserts that the structure in Cutlan is not of unitary construction. It is believed that the structure in Cutlan is a unitary structure due to all of the different elements being assembled into one unit.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 703-305-4949. The examiner can normally be reached on Monday thru Friday between 8am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

IN
IH
July 29, 2004


BOYER ASHLEY
PRIMARY EXAMINER